

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

COLLEEN FRANCES LADWIG,

Plaintiff,

V.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security

Defendant.

Case No. 2:17-cv-00518-TLF

ORDER AFFIRMING  
DEFENDANT'S DECISION TO  
DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of her applications for disability insurance and supplemental security income (SSI) benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court finds defendant's decision to deny benefits should be affirmed.

## FACTUAL AND PROCEDURAL HISTORY

On February 9, 2009, plaintiff filed an application for disability insurance benefits and another one for SSI benefits, alleging in both applications that she became disabled beginning August 1, 2008. Dkt. 17, Administrative Record (AR) 1510. Both applications were denied on

1 initial administrative review and on reconsideration. *Id.* Following a hearing, an administrative  
2 law judge (ALJ) applied the Commissioner's five-step sequential disability evaluation process,  
3 finding in a decision dated December 14, 2011, that plaintiff could perform past relevant work at  
4 step four of that process and therefore that she was not disabled. AR 14-28.

5 Plaintiff appealed that decision to this Court, which on July 26, 2013, reversed the ALJ's  
6 decision and remanded the matter for further administrative proceedings. AR 660-666. On  
7 remand, following a hearing held before the same ALJ, in a decision dated January 20, 2015,  
8 plaintiff again was found to be capable of performing past relevant work at step four of the  
9 sequential disability evaluation process and therefore that she was not disabled. AR 637-659.

10 Once more plaintiff appealed that decision, and once more the Court reversed the ALJ's  
11 decision and remanded the matter for further administrative proceedings. AR 1564-1575. On  
12 remand, a hearing was held before a different ALJ, at which plaintiff appeared and testified, as  
13 did a vocational expert. AR 2008-2065. In a decision dated December 8, 2016, the ALJ found  
14 plaintiff had severe impairments consisting of obesity, status post cervical spine surgery, lumbar  
15 degenerative disc disease, status post bilateral carpal tunnel surgery, an affective disorder, and an  
16 anxiety disorder. AR 1513.

17 The ALJ nevertheless found plaintiff could perform other jobs existing in significant  
18 numbers in the national economy at step five of the sequential disability evaluation process, and  
19 therefore that she was not disabled. AR 1510-1529. It appears the Appeals Council did not  
20 assume jurisdiction of the matter, making the ALJ's decision the Commissioner's final decision,  
21 which plaintiff appealed in a complaint filed with this Court on April 6, 2017. Dkt. 3; 20 C.F.R.  
22 § 404.981, § 416.1481.

23 Plaintiff seeks reversal of the ALJ's decision and remand for an award of benefits, or in  
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1 the alternative for further administrative proceedings, arguing the ALJ erred:

- 2 (1) in determining that plaintiff did not object to the admission of a 2009  
3 Cooperative Disability Investigations Unit (“CDIU”) report;
- 4 (2) in failing to follow the Court’s second remand order directing the ALJ  
5 to re-evaluate the October 2013 opinion of Sharon A. Osea, M.D., and  
6 reweigh all of the medical opinion evidence;
- 7 (3) in giving little weight to the opinions of examining psychologist Sylvia  
8 Thorpe, Ph.D.;
- 9 (4) in failing to reweigh the opinions of examining psychiatrist Anselm  
10 Parlatore, M.D.
- 11 (5) in assessing plaintiff’s residual functional capacity (“RFC”); and
- 12 (6) in finding plaintiff could perform other jobs existing in significant  
13 numbers in the national economy.

14 For the reasons set forth below, however, the Court disagrees that the ALJ erred as alleged, and  
15 therefore recommends that the Court affirm the decision to deny benefits.

#### DISCUSSION

16 The Court will uphold an ALJ’s decision unless: (1) the decision is based on legal error;  
17 or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill*, 874 F.3d 648,  
18 654 (9th Cir. 2017). Substantial evidence is ““such relevant evidence as a reasonable mind might  
19 accept as adequate to support a conclusion.”” *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir.  
20 2017) (quoting *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir.  
21 1988)). This requires ““more than a mere scintilla,”” though ““less than a preponderance”” of the  
22 evidence. *Id.* (quoting *Desrosiers*, 846 F.2d at 576). If more than one rational interpretation can  
23 be drawn from the evidence, then the Court must uphold the ALJ’s interpretation. *Orn v. Astrue*,  
24 495 F.3d 625, 630 (9th Cir. 2007). That is, “[w]here there is conflicting evidence sufficient to  
25 support either outcome,” the Court “must affirm the decision actually made.” *Allen v. Heckler*,  
749 F.2d 577, 579 (9th Cir. 1984) (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.

1 1971)). The Court may not affirm by locating a quantum of supporting evidence and ignoring the  
2 non-supporting evidence. *Orn*, 495 F.3d at 630.

3 The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759  
4 F.3d 995, 1009 (9th Cir. 2014). The Court is required to weigh both the evidence that supports,  
5 and evidence that does not support, the ALJ’s conclusion. *Id*. The Court may not affirm the  
6 decision of the ALJ for a reason upon which the ALJ did not rely. *Id*. Only the reasons identified  
7 by the ALJ are considered in the scope of the Court’s review. *Id*.

8 I. The ALJ’s Error in Finding Plaintiff Did not Object to the Admission of the 2009 CDIU  
9 Report Was Harmless

10 In his decision, the ALJ considered a 2009 Cooperative Disability Investigations Unit  
11 (“CDIU”) report that was initiated based on inconsistencies the state Disability Determination  
12 Services office found in plaintiff’s allegations and presentations. AR 93-114. The ALJ overruled  
13 plaintiff’s counsel’s objections to admitting that report at the October 2016 hearing, finding no  
14 evidence plaintiff’s counsel objected to its admission at any of the earlier hearings. AR 1511.  
15 Plaintiff correctly points out, though, that plaintiff’s counsel did object thereto at the October  
16 2011 hearing. AR 577-78.

17 Plaintiff argues this error is not harmless, because it “raises the question of whether the  
18 ALJ even read any of the transcript or decision from the prior hearing[s].” Dkt. 23, p. 4. There is  
19 no indication, however, that while the ALJ clearly got the above fact wrong, he failed to read or  
20 otherwise comprehend the remainder of the transcript or other portions of the record. As such,  
21 the Court declines to consider this a basis for finding harmful error. *See Stout v. Comm’r, Soc.*  
22 *Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (error harmless where it is non-prejudicial to  
23 claimant or irrelevant to the ALJ’s ultimate disability conclusion).

24 Plaintiff’s counsel objected to admitting the CDIU report on the basis that it contained  
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1 hearsay and was “not signed under any type of oath.” AR 577-78; *see also* AR 2012. The ALJ in  
2 overruling the objection noted that it went to “the weight that should be given” to the report, and  
3 not to the issue of admissibility. AR 2013-2014, 1511. Plaintiff argues the lack of any signature  
4 should have precluded the report’s admission, asserting as support for that argument that “Social  
5 Security Administration form SSA-795 requires statements from claimants or other person to be  
6 made under penalty of perjury,” and that “[w]itnesses at administrative hearings are placed under  
7 oath prior to testifying.” Dkt. 23, p. 5.

8 The Court has not been provided with a copy of the above-referenced form. Thus, it is not  
9 at all clear that claimants and other persons are required to use that form, that those persons who  
10 provide statements outside the administrative hearing context are required to make them under  
11 penalty of perjury, or that an ALJ is limited to considering only statements that are made under  
12 penalty of perjury. As the ALJ noted, in regard to the type of evidence that may be considered  
13 when evaluating a disability claim, the Commissioner’s regulations merely refers to “relevant  
14 evidence.” AR 1511 (citing 20 C.F.R. § 404.1527(b), § 416.927(b)). Further, “evidence” is  
15 defined in 20 C.F.R. § 404.1513(a) and § 416.913(a) as “anything you or anyone else submits to  
16 us or that we obtain that relates to your claim.”

17 And as defendant points out, the Social Security Act does not preclude consideration of  
18 hearsay. *See* Dkt. 27, p. 3 (citing *Richardson v. Perales*, 402 U.S. 389, 410 (1971) (noting that  
19 the Social Security Act grants the Commissioner the authority “to receive evidence ‘even though  
20 inadmissible under rules of evidence applicable to court procedure,’” and that hearsay under the  
21 Social Security Act “is thus admissible up to the point of relevancy”) (quoting Section 205(a)  
22 and (b) of the Social Security Act). As plaintiff neither argues nor shows that the CDIU report is  
23 irrelevant to her disability claim, the ALJ was permitted to admit and consider it, and therefore

1 did not err in doing so.

2 II. The ALJ Properly Evaluated and Weighed the Medical Opinion Evidence

3 The ALJ is responsible for determining credibility and resolving ambiguities and  
4 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where  
5 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions  
6 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,  
7 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d  
8 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or  
9 are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical  
10 opinions “falls within this responsibility.” *Id.* at 603.

11 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings  
12 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this  
13 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,  
14 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences  
15 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may  
16 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881  
17 F.2d 747, 755, (9th Cir. 1989).

18 There are several categories of medical professionals that typically provide information  
19 that is reviewed during the Social Security application and appeal process. *Lester v. Chater*, 81  
20 F.3d 821, 830 (9th Cir. 1996); *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th Cir. 1996). Some of  
21 the most common are: First, medical doctors in the role of treating physicians, who actually  
22 treated the claimant; second, medical doctors in the role of examining physicians, who examined  
23 but did not treat the claimant; third, medical doctors who are non-examining physicians and

1 neither treated nor examined the claimant but reviewed medical records and other information;  
2 and fourth, acceptable medical sources who are medical professionals but do not fall into the  
3 category of any type of medical doctor; and fifth, other sources. *Molina v. Astrue*, 674 F.3d 1104,  
4 1111-12 (9th Cir. 2012); *Lester*, 81 F.3d at 830; *see also Leon v. Berryhill*, 874 F.3d 1130, 1133-  
5 34 (nurse practitioner is an acceptable medical treating source for claims filed after March 27,  
6 2017, under updated regulation 20 C.F.R. § 404.1527 and § 416.920c); *Popa v. Berryhill*, 872  
7 F.3d 901, 906 (9th Cir. 2017) (treatment provider with a PhD in nursing was an “other source”  
8 under the pre-March 27, 2017 regulation even though she was the primary treating medical  
9 provider for plaintiff); *Gomez*, 74 F.3d at 971 (“acceptable medical sources” included in  
10 regulations are, among others, licensed physicians and licensed or certified psychologists); 20  
11 C.F.R. § 404.1513(a)-(d), § 404.1529(a),(c), § 416.913.

12 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted  
13 opinion of either a treating or examining physician. *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th  
14 Cir. 2017) (quoting *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)). Even  
15 when a treating or examining physician’s opinion is contradicted, an ALJ may only reject that  
16 opinion “by providing specific and legitimate reasons that are supported by substantial  
17 evidence.” *Id.* However, the ALJ “need not discuss *all* evidence presented” to him or her.  
18 *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation  
19 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence  
20 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*  
21 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

22 In general, more weight is given to a treating physician’s opinion than to the opinions of  
23 those who do not treat the claimant. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). On  
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1 the other hand, an ALJ need not accept the opinion of a treating physician, “if that opinion is  
2 brief, conclusory, and inadequately supported by clinical findings” or “by the record as a whole.”  
3 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v.*  
4 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th  
5 Cir. 2001). An examining physician’s opinion is “entitled to greater weight than the opinion of a  
6 nonexamining physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may  
7 constitute substantial evidence if “it is consistent with other independent evidence in the record.”  
8 *Id.* at 830-31; *Tonapetyan*, 242 F.3d at 1149.

9                   A.     The ALJ Complied with the Court’s Second Remand Order

10               At the beginning of his decision, the ALJ stated that “the only specific error found by the  
11 District Court [in its second remand order] was that the decision did not properly evaluate one  
12 medical opinion regarding [plaintiff’s] physical limitations (the October 2013 opinion provider  
13 Dr. Osea).” AR 1510. The ALJ further stated that the Court “noted that this error may have  
14 resulted in a flawed residual functional capacity finding,” and that the Court ordered the ALJ on  
15 remand to re-evaluate Dr. Osea’s opinion and plaintiff’s RFC, and proceed to steps four and five  
16 of the sequential disability evaluation process “as appropriate.” *Id.*

17               Plaintiff argues this is an inaccurate characterization of the Court’s second remand order.  
18 Rather than limiting the ALJ to merely re-evaluating the opinion of Dr. Osea, plaintiff claims,  
19 the Court specifically directed the ALJ to also re-weigh “all of the medical opinion evidence”  
20 along with plaintiff’s RFC assessment. Dkt. 23, p. 6 (quoting AR 1575). Plaintiff asserts, though,  
21 that there is no evidence the ALJ actually did this, other than specifically with respect to the  
22 opinions of Dr. Osea and three other medical sources. *Id.*

23               As defendant points out, however, and as plaintiff herself notes, the Court qualified the  
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1 ALJ's duty to "reweigh all of the medical opinion evidence" to "as appropriate." AR 1575. The  
2 implication of this language, therefore, is that the ALJ was required to reweigh that evidence *if*  
3 the ALJ deemed it appropriate to do so. The problem, though, is that it is unclear from the ALJ's  
4 decision that the ALJ made that determination. Rather, the ALJ expressly stated that because the  
5 Court "found no error in the analysis of the [medical] opinions in the prior [ALJ's] decision,  
6 apart from that of Dr. Osea," then "except for Dr. Osea's opinion, I incorporate by reference the  
7 opinions from" that prior decision. AR 1523.

8 Had the ALJ indicated that he had considered those other opinions and determined that  
9 reweighing them was unnecessary or not appropriate, the ALJ would have been in compliance  
10 with the Court's second remand order. But given that the ALJ did not do this, the Court cannot  
11 say the ALJ complied with that remand order in this respect. That being said, the Court finds this  
12 error to be harmless. This is because the ALJ offered specific reasons for discounting Dr. Osea's  
13 opinion, none of which plaintiff challenges, and at least two of which were specific to Dr. Osea's  
14 own opinion and findings and thus do not depend on the credibility of the other medical opinion  
15 source evidence in the record. For example, the ALJ found:

- 16 • Dr. Osea's opinion was internally inconsistent regarding the limitations  
she assessed;
- 17 • those limitations were inconsistent with the objective findings Dr. Osea  
recorded, with "the longitudinal medical evidence," and with plaintiff's  
activities; and
- 19 • Dr. Osea's opinion appeared to rely in large part on plaintiff's self-report  
20 regarding her pain symptoms.

21 AR 1523-24. These are valid reasons for rejecting an examining medical source's opinion. *See*  
22 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (a medical opinion may be rejected if  
23 it is based "to a large extent" on a claimant's self-report that has been "properly discounted as

1 incredible")<sup>1</sup>; *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (discrepancies between a  
2 medical source's functional assessment and that source's clinical notes, recorded observations  
3 and other comments regarding a claimants capabilities "is a clear and convincing reason for not  
4 relying" on the assessment); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th  
5 Cir. 2004) (an ALJ need not accept a medical opinion if it is inadequately supported by clinical  
6 findings or by the record as a whole).

7       B.     The ALJ Offered Valid Reasons for Rejecting Dr. Thorpe's Opinion

8       Sylvia A. Thorpe, Ph.D., conducted a psychological examination of plaintiff in late May  
9 2015, opining that plaintiff was moderately to severely limited in a number of mental functional  
10 areas, and that it appears she may be paranoid schizophrenic with delusions of grandeur and  
11 persecution. AR 1640. The ALJ gave "little weight" to this opinion, stating that Dr. Thorpe "did  
12 not provide sufficient findings to substantiate" it, that she "failed to review any treatment notes  
13 other evidence" that "includes extensive psychiatric treatment notes, which show neither findings  
14 nor a diagnosis regarding paranoid schizophrenia or any other psychotic disorder," and that the  
15 opinion was inconsistent with both the overall mental health record and plaintiff's activities. AR  
16 1525-1526.

17       In challenging the ALJ's rejection of Dr. Thorpe's opinion, plaintiff again points to what  
18 she asserts is the ALJ's error in not specifically reweighing all of the medical opinions. As with  
19 the ALJ's treatment of Dr. Osea's opinion, though, here too the ALJ gave reasons for rejecting  
20 Dr. Thorpe's opinion that are specific to her own findings and opinion. And as discussed below,  
21 those reasons are legitimate. Nor does plaintiff explain how any of the medical opinions the ALJ

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<sup>1</sup> Plaintiff does not contest the ALJ's adverse credibility determination. *See* AR 1518-1522.

1 allegedly failed to reweigh call into question the validity of any of the reasons the ALJ relied on  
2 to reject Dr. Thorpe's opinion.

3 Plaintiff next asserts the ALJ erred in discounting Dr. Thorpe's opinion on the basis that  
4 she failed to review any treatment notes or other evidence, essentially arguing it was sufficient  
5 for her to rely on her own diagnoses, mental status examination results, and observations. While  
6 it is true that an examining medical source is not *required* to consider other, outside evidence  
7 before forming an opinion, as defendant notes the extent to which the medical source is familiar  
8 with such evidence is a relevant factor an ALJ may consider in deciding what weight to give that  
9 opinion. 20 C.F.R. § 404.1527(c)(6), § 416.927(c)(6).

10 Plaintiff also contests the ALJ's statement that the record shows no findings or diagnosis  
11 of paranoid schizophrenia or other psychotic disorder. Specifically, plaintiff argues that while  
12 Dr. Thorpe was the first to diagnose paranoid schizophrenia, it has not been contradicted by any  
13 other medical evidence. But the fact that no other medical source has similarly diagnosed  
14 plaintiff itself calls that diagnosis into question. For example, despite evaluating plaintiff in 2009  
15 and 2014, Anselm Parlatore, M.D., limited his diagnoses to major depression, sleep apnea, and  
16 posttraumatic stress disorder. AR 225, 1631. Plaintiff also was evaluated by Kees Hoffman,  
17 Ph.D., in 2010, and by Carl Epp, Ph.D., in both 2010, and 2013, neither of whom diagnosed  
18 paranoid schizophrenia. AR 286, 404, 1598. The diagnoses Dr. Osea provided are restricted to  
19 depression and anxiety as well. AR 1182.

20 It is reasonable to assume that if Dr. Thorpe's 2015 diagnosis had been correct, some  
21 indication of its presence would have been observed by these and the other medical sources who  
22 treated and examined plaintiff at some point during the prior six years. Plaintiff nevertheless  
23 points to the marked to severe limitations in maintaining appropriate behavior and completing a  
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1 normal work day and work week due to psychological-based symptoms that Dr. Parlatore found  
2 in 2014 (AR 1632), as evidence of the existence of paranoid schizophrenia. Yet Dr. Parlatore did  
3 not make any such diagnosis. And while plaintiff is apparently directing criticism at the ALJ for  
4 having “succumb[ed] to the temptation to play doctor” (Dkt. 23, p. 10 (quoting *Schmidt v.*  
5 *Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990)), if the Court interpreted these marked to severe  
6 limitations as being an indicator of the presence of that diagnosis, then the same “playing doctor”  
7 criticism may be directed at the Court.

8 Plaintiff further argues Dr. Thorpe’s opinion was based on her own observations and  
9 testing. In particular, plaintiff points to the comments that “THIS WOMAN IS UNUSUAL” and  
10 “THIS LADY IS PROB PARANOID SCHIZOPHRENIC.” AR 1643. But the second comment  
11 is merely an opinion regarding a diagnosis, which as just discussed the ALJ did not err in finding  
12 to be unsupported by the record. In addition, although the observation that plaintiff is “unusual”  
13 does indicate the existence of some potential psychological issues – and Dr. Thorpe did note that  
14 she “SEEMS A LITTLE COGNITIVELY SLOW” – the remainder of Dr. Thorpe’s mental status  
15 results are unremarkable. AR 1642-1644. And to the extent there is ambiguity and/or  
16 inconsistency in those results, it is solely the duty of the ALJ to resolve them. *Sample v.*  
17 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). For the foregoing reasons the ALJ’s decision was  
18 rational, and therefore the Court will not overturn it. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.  
19 2007); *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

20 Lastly, plaintiff asserts the ALJ improperly relied on her activities as a basis for rejecting  
21 Dr. Thorpe’s opinions. The Court agrees. The ALJ noted that plaintiff “attended community  
22 college in person on a regular basis, where she completed her nursing assistant degree and  
23 obtained a B in chemistry,” lived alone, “attended to all normal daily activities,” and “functioned

1 as desired.” AR 1526. Plaintiff testified, however, that her school attendance was not full-time,  
2 her instruction was flexible, she was allowed additional time to complete tests, and she received  
3 accommodations during classes. AR 2022, 2035, 2040.

4 As to the ability to live alone, perform all normal daily activities, and function “as  
5 desired,” the ALJ does not explain how this general description of plaintiff’s activity level  
6 establishes she is able to perform household chores for a substantial part of the day or other  
7 activities that are transferable to a work setting. *Smolen v. Chater*, 80 F.3d 1273, 1284 and n.7  
8 (9th Cir. 1996) (noting further that claimants need not be “utterly incapacitated” to be eligible for  
9 disability benefits, and that “many home activities may not be easily transferable to a work  
10 environment”).

11 C. The ALJ Did Not Improperly Fail to Reweigh Dr. Parlatore’s Opinions

12 As noted above, plaintiff underwent two psychiatric evaluations performed by Anselm  
13 Parlatore, M.D., in 2009, and again in 2014. AR 222-226, 1630-1633. In his 2014 evaluation  
14 report, Dr. Parlatore opined that plaintiff was markedly to severely impaired in four mental  
15 functional areas. AR 1632. Plaintiff argues the ALJ erred in failing to mention or provide any  
16 weight to the 2014 opinion.

17 As discussed previously in regard to the opinion evidence from Dr. Osea, the ALJ failed  
18 to fully comply with the Court’s second remand order by merely stating he was incorporating by  
19 reference the medical source opinions from the prior ALJ’s decision, without indicating whether  
20 he actually had found reweighing those opinions was necessary or appropriate. Also as discussed  
21 previously, however, the ALJ’s error was harmless given the other independent valid reasons the  
22 ALJ provided for discounting Dr. Osea’s opinion.

1 For the same reasons, the Court finds any error in not expressly addressing the opinion  
2 evidence from Dr. Parlatore to be harmless. First, as noted, the Court's direction that the ALJ  
3 reweigh the other medical opinions in the record "as appropriate" was specifically in the context  
4 of the ALJ's re-evaluation of Dr. Osea's opinion, and the ALJ properly rejected that opinion.  
5 Second, while the limitations Dr. Parlatore assessed may be more severe than those the ALJ  
6 adopted, plaintiff offers no argument or support for why the reasons the prior ALJ offered for  
7 rejecting those limitations, and which the ALJ incorporated by reference, are not supported by  
8 substantial evidence. AR 1523, 1552. And at least one of those reasons – that Dr. Parlatore's  
9 opinions "contrasts sharply with the claimant's . . . appearance and performance during multiple  
10 evaluations" (AR 1552) – does appear to be supported by the record. *See* AR 285, 427-447, 455,  
11 503-513, 517, 519, 996, 1002-1038, 1053, 1055, 1057, 1181, 1247-1309, 1317-1319, 1600-1601,  
12 1642-1644, 1713-1714, 1807-1814, 1824-1838, 1850-1871, 1878-1880.

13 III. The ALJ Did Not Err in Assessing Plaintiff's RFC or in Determining Plaintiff to Be Not  
Disabled at Step Five

14 The Commissioner employs a five-step "sequential evaluation process" to determine  
15 whether a claimant is disabled. 20 C.F.R. § 404.1520, § 416.920. If the claimant is found  
16 disabled or not disabled at any particular step thereof, the disability determination is made at that  
17 step, and the sequential evaluation process ends. *See id.* A claimant's RFC assessment is used at  
18 step four of the process to determine whether he or she can do his or her past relevant work, and  
19 at step five to determine whether he or she can do other work. Social Security Ruling (SSR) 96-  
20 8p, 1996 WL 374184, at \*2. It is what the claimant "can still do despite his or her limitations."

21 *Id.*

22 A claimant's RFC is the maximum amount of work the claimant is able to perform based  
23 on all of the relevant evidence in the record. *Id.* However, an inability to work must result from  
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1 the claimant's "physical or mental impairment(s)." *Id.* Thus, the ALJ must consider only those  
2 limitations and restrictions "attributable to medically determinable impairments." *Id.* In assessing  
3 a claimant's RFC, the ALJ also is required to discuss why the claimant's "symptom-related  
4 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the  
5 medical or other evidence." *Id.* at \*7.

6 At step five of the sequential disability evaluation process, the ALJ must show there are a  
7 significant number of jobs in the national economy the claimant is able to perform. *Tackett v.*  
8 *Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999); 20 C.F.R. § 404.1520(e). The ALJ can do this  
9 through testimony of a vocational expert. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162-63 (9th Cir.  
10 2000).

11 An ALJ's step five determination will be upheld if the weight of the medical evidence  
12 supports the hypothetical posed to the vocational expert. *Martinez v. Heckler*, 807 F.2d 771, 774  
13 (9th Cir. 1987). The vocational expert's testimony therefore must be reliable in light of the  
14 medical evidence to qualify as substantial evidence. *Embrey v. Bowen*, 849 F.2d 418, 422-23  
15 (9th Cir. 1988). Accordingly, the ALJ's description of the claimant's functional limitations,  
16 which forms the residual functional capacity (RFC) determination, "'must be accurate, detailed,  
17 and supported by the medical record.'" *Id.* (quoting *Desrosiers*, 846 F.2d at 578 (Pregerson, J.,  
18 concurring)).

19 Here, the ALJ found plaintiff could perform a modified range of light work, with the  
20 ability to perform the mental requirements for semi-skilled occupations. AR 1517. The ALJ  
21 further found plaintiff could perform other jobs existing in significant numbers in the national  
22 economy based on that RFC at step five. AR 1527-1528. Plaintiff argues the ALJ erred in so  
23 finding, relying on the other alleged errors addressed above concerning the ALJ's reliance on the  
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1 CDIU report and his evaluation of the medical opinion evidence in the record. But because none  
2 of the errors the ALJ committed were actually harmful, plaintiff has failed to carry her burden of  
3 demonstrating the ALJ erred in assessing her RFC or in finding her not disabled at step five.

4 **CONCLUSION**

5 Based on the foregoing discussion, the Court finds the ALJ properly determined plaintiff  
6 to be not disabled. Defendant's decision to deny benefits therefore is AFFIRMED.

7 Dated this 19th day of April, 2018.

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11 Theresa L. Fricke  
12 United States Magistrate Judge  
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